Lord Diplock in *McEldowney* v. *Forde*[4] where he said:

"Parliament makes laws and can delegate part of its power to do so to some subordinate authority. The courts construe law whether made by Parliament directly or by a subordinate authority acting under delegated legislative powers. The view of the courts as to whether particular statutory or subordinate legislation promotes or hinders the common weal is irrelevant. The decision of the courts as to what the words used in the statutory or subordinate legislation mean is decisive. Where the validity of subordinate legislation made pursuant to powers delegated by Act of Parliament to a subordinate authority is challenged, the court has a threefold task: first, to determine the meaning of the words used in the Act of Parliament itself to describe the subordinate legislation which that authority is authorised to make, secondly, to determine the meaning of the subordinate legislation itself and finally to decide whether the subordinate legislation complies with that description."

Lord Diplock in *Hoffmann-La Roche* v. *Secretary of State*[5] at page 1153 also said that he entertained no doubt whatsoever that the courts have jurisdiction to declare invalid a delegated legislation if "in making it the Minister who did so acted outside the legislative powers conferred on him by the previous Act of Parliament under which the order purported to be made".

The term *ultra vires* in relation to a delegated legislation can be interpreted in a double sense. First it can mean that the rule or regulation in question deals with a subject not within the scope of the power conferred upon the delegated legislative authority. Second, it can also mean that although the delegated legislation in question deals with the proper subject it has gone beyond the limits prescribed by the parent law. See also *Young* v. *Tockassie*.[6]

The respondent on the other hand cited *Kumpulan Kamuning Sdn. Bhd.* v. *Rajoo & Ors.*[7] and contended that the Federal Court had accepted the validity of regulation 8 of the 1980 Regulations. We are very clear, however, that the question of the *vires* of regulation 8 was never raised nor considered in that case.

Section 60J(2) of the Employment Act provides that without prejudice to the generality of sub-section (1) regulations made by virtue of sub-section (1) may provide *inter alia:*

"(a) for the definition of the expression "termination benefits", "lay-off benefits", or "retirement benefits", as the case may be, and for the circumstances in which the same shall be payable."

Basically the word "employer" in the Act means any person who has entered into a contract of service to employ another person as an employee. In our view it is clear that the powers conferred by section 60J(1) and (2) of the Act are not wide enough to cover a person who is not an employer. *The person by whom the business is taken over immediately after the change occurs* (these words appear in Regulation 8(2)) is not an employer as defined in the Act. The imposition of liability on such person is never envisaged by the parent Act. As in the case of *Morton* v. *Union Steamship Co. of New Zealand Ltd.*[8] the purpose of the Act is to impose liability upon a set of persons whereas the regulation purports to impose a liability upon another set of persons never intended by the legislature.

We therefore hold that Regulation 8(2) of the Employment (Termination and Lay-Off Benefits) Regulations, 1980 is *ultra vires* the Employment Act 1955 to the extent only that it purports to impose a liability on persons in the situation of the appellant here. But the invalid part of the regulation is not "inextricably interconnected" with the valid part. The doctrine of severability can therefore be applied – see also *Dunkley* v. *Evans & Anor.*[9]

The appeal is accordingly allowed with costs. Deposit to be returned to appellant.

Appeal allowed.

Solicitors: *Shook, Lin & Bok.*

SUPERINTENDENT OF PUDU PRISON & ORS. v. SIM KIE CHON

[S.C. (Salleh Abas L.P., Hashim Yeop A. Sani & Abdoolcader S.C.JJ.) February 3 & 12, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 334 of 1985]

Practice and Procedure – Application for stay of execution of sentence of death – Application to set aside as abuse of process of court – Application to set aside dismissed – Appeal – Function of Pardons Board – Exercise of prerogative of mercy by Yang di-Pertuan Agong – Non-justiciable – Federal Constitution, arts. 32(1) & 42.

Constitutional Law – Prerogative of mercy – Function of Pardons Board – Exercise of prerogative of mercy by Yang di-Pertuan Agong – Non-justiciable – Federal Constitution, arts. 32(1) & 42.

The respondent had been tried and convicted on a charge under section 57(1) of the Internal Security Act,

1960 and sentenced to death by the High Court at Kuala Lumpur on June 14, 1983. His appeal to the Federal Court was dismissed on October 26, 1983, and on his case being referred for clemency to His Majesty the Yang di-Pertuan Agong under section 281(c) of the Criminal Procedure Code ('the Code') for consideration in accordance with the provisions of article 42 of the Constitution of Malaysia read with regulation 29 of the Essential (Security Cases) Regulations, 1975 ('the Regulations'), the sentence of death was confirmed and ordered to be carried out and an order to this effect was issued by His Majesty on April 20, 1985. Pursuant thereto a warrant was issued setting the date for execution as July 3, 1985. The respondent then commenced an action on July 2, 1985 against the first and third appellants and the Pardons Board, Malaysia instead of the second appellant for declarations impugning the rejection of clemency on the ground of discrimination in breach of article 8 of the Constitution. Hashim J. granted a stay of execution of the sentence on that very day but this was later lifted and the action struck out on an application by the defendants thereto. An application for a stay and appeal against that decision were heard together and dismissed by the Supreme Court on July 23, 1985. See [1985] 2 M.L.J. 385.

The respondent then instituted the present suit against the first three appellants on August 13, 1985. His application for a stay of execution of the sentence was refused but the Yang di-Pertuan Agong in the exercise of the powers of clemency vested in him granted a respite pending the final disposal of these proceedings. The first three appellants applied to strike out the second appellant as a party and to set aside this action as an abuse of the process of the court. Hashim J. dismissed this application on October 17, 1985. The appellants appealed and about ten days before the hearing of the appeal the respondent obtained an order from the learned Judge to join the fourth appellant as a party to this action and to amend the writ and statement of claim.

At the outset of the hearing of the appeal an application was made on behalf of the respondent to include the amended writ and statement of claim in the record of appeal and this was allowed. On the basis of the amended pleading the relief the respondent sought was for declarations to the effect that the fourth appellant, the Pardons Board for Security Offences which considered the respondent's case, was not lawfully constituted, that the second appellant, the Pardons Board for the Federal Territory, was the proper body for that purpose, that the decision of the Pardons Board dated April 20, 1985 was void and legally ineffective, that the warrant or warrants of execution of sentence of death were equally void and of no effect and that the Pardons Board had acted unfairly and in breach of the rules of natural justice and of the provisions of articles 42, 5(1) and 8(1) of the Constitution, and for a stay of execution pending the final disposal of the imminent proceedings.

Held: (1) the power of pardon or otherwise to mete out clemency is an executive power and in the Federal Constitution the royal prerogative of mercy is expressly preserved by Article 42 of the Constitution and is recognised by its inclusion in Chapter 3 of Part IV of the Constitution as an executive power. When the Constitution has empowered the nation's highest executive as the repository of clemency power, the court cannot intervene and judicial review is excluded by implication;

(2) the fourth respondent is the appropriate Pardons Board properly constituted under the Essential (Security Cases) Regulations, 1975, and was the proper body for the purpose of advising the Yang di-Pertuan Agong under Article 42 of the Federal Constitution read with regulation 29 of the Regulations;

(3) the scope of the duty to act fairly imposed by the rules of natural justice depends upon the subject-matter and circumstances of each case and in this case neither the Federal Constitution nor the Criminal Procedure Code contained the requirements requiring the Pardons Board to act in the manner contended for by the respondent;

(4) the plea of *res judicata* applied in this case and there is moreover the inherent jurisdiction of the court in cases where *res judicata* is not strictly established and where estoppel per *rem judicatam* has not been sufficiently pleaded or made out, but nevertheless the circumstances are such as to render any reagitation of the questions formerly adjudicated upon a scandal and an abuse, to enable the Court to dismiss the action or stay proceedings or strike out the defence, as the case may require;

(5) although there were two warrants of execution of sentence issued under section 281 of the Criminal Procedure Code and a third may be issued, this is not unlawful as the matter is envisaged and provided for under section 281(d)(ii) of the Code and in any event section 28(1) of the Interpretation and General Clauses Ordinance, 1948 specifically provides that a power conferred or a duty imposed by a written law may be exercised or performed from time to time as occasion requires;

(6) the order of the learned Judge should be set aside and the action instituted by the respondent struck out.

Cases referred to:

(1) *Horwitz* v. *Connor* (1908) 6 C.L.R. 38, 40.
(2) *Hanratty* v. *Lord Butler of Saffron Walden* (1971) 115 S.J. 386; *The Times* May 13, 1971.
(3) *Council of Civil Service Unions & Ors.* v. *Minister for the Civil Service* [1985] A.C. 374.
(4) *De Freitas* v. *Benny* [1976] A.C. 239, 248.
(5) *Hinds* v. *The Queen* [1977] A.C. 195, 228.
(6) *G. Krishta Goud & J. Bhoomaiah v. State of Andra Pradesh & Ors.* [1976] 2 S.C.R. 73, 76.
(7) *Sim Kie Chon* v. *Superintendent of Pudu Prison & Ors.* [1985] 2 M.L.J. 385.
(8) *S. Kulasingam & Anor.* v. *Commissioner of Lands, Federal Territory & Ors.* [1982] 1 M.L.J. 204, 210-211.
(9) *Payne* v. *Lord Harris of Greenwich* [1981] 1 W.L.R. 754.
(10) *Hoystead & Ors.* v. *Commissioner of Taxation* [1926] A.C. 155, 165-166.
(11) *Brisbane City Council and Myer Shopping Centres Pty. Ltd.* v. *Attorney-General for Queensland* [1979] A.C. 411, 425.
(12) *Hunter* v. *Chief Constable of the West Midlands Police & Ors.* [1982] A.C. 529, 542.

SUPREME COURT.

T. Selventhiranathan, Senior Federal Counsel (*Mohamed Rauf bin Nabi Box*, Senior Federal Counsel, with him) for the appellants.

K. Siva Segara for the respondent.

Cur. Adv. Vult.

Abdoolcader S.C.J. (delivering the Judgment of the Court): Viewed in the context and against the backdrop of previous proceedings instituted by the respondent to the like effect and which have since been disposed of, an appropriate and succinct caption to this present episode in the ineluctably protracted Sim Kie Chon saga would be 'a case of new wine in an old bottle'. To exposit this requires a brief descent into the sub-cellars of its somewhat chequered history.

The respondent was tried and convicted on a charge under section 57(1) of the Internal Security Act, 1960 and sentenced to death by the High Court at Kuala Lumpur on June 14, 1983. His appeal to the Federal Court was dismissed on October 26, 1983, and on his case being referred for clemency to His Majesty the Yang di-Pertuan Agong under section 281(c) of the Criminal Procedure Code ('the Code') for consideration in accordance with the provisions of article 42 of the Constitution of Malaysia read with regulation 29 of the Essential (Security Cases) Regulations, 1975 ('the Regulations'), the sentence of death was confirmed and ordered to be carried out and an order to this effect was issued by His Majesty on April 20, 1985. Pursuant thereto a warrant was issued setting the date for execution as July 3, 1985. The respondent then commenced an action on July 2, 1985 against the first and third appellants and the Pardons Board, Malaysia instead of the second appellant for declarations impugning the rejection of clemency on the ground of discrimination in breach of article 8 of the Constitution. Harun Hashim J. granted a stay of execution of the sentence on that very day but this was later lifted and the action struck out on an application by the defendants thereto. An application for a stay and an appeal against that decision were heard together and dismissed by the Supreme Court on July 23, 1985.

We pause to observe that the respondent had also previously applied to the High Court at Kuala Lumpur to adduce for the purposes of a petition for clemency further evidence and submissions in respect of his conviction in the substantive criminal proceedings in which he was convicted and sentenced to death. This was refused as it was virtually an attempt to reopen his conviction; an appeal to the Supreme Court was lodged but later abandoned. A fresh warrant of execution now fixed the date of execution for August 15, 1985.

The respondent then instituted the present suit against the first three appellants on August 13, 1985. His application for a stay of execution of the sentence was refused but the Yang di-Pertuan Agong in the exercise of the powers of clemency vested in him granted a respite pending the final disposal of these proceedings. The first three appellants applied to strike out the second appellant as a party and to set aside this action as an abuse of the process of the court. Harun Hashim J. dismissed this application on October 17, 1985 without, regrettably, giving any reasons or grounds for his decision but we are given to understand from the Bar that he indicated at the hearing that he thought there were triable issues. The appellants appealed and about ten days before the hearing of this appeal the respondent obtained an order from the learned Judge to join the fourth appellant as a party to this action and to amend the writ and statement of claim.

At the outset of the hearing of this appeal we acceded to a motion on behalf of the respondent to include the amended writ and statement of claim in the record of appeal. On the basis of his amended pleading the relief the respondent seeks is, briefly, for declarations to the effect that the fourth appellant which considered the respondent's case was not lawfully constituted, that the second appellant was the proper body for this purpose, that the decision of the Pardons Board dated April 20, 1985 was void and legally ineffective, that the warrant or warrants of execution of sentence of death were equally void and of no effect and that the Pardons Board had acted unfairly and in breach of the rules of natural justice and of the provisions of articles 42, 5(1) and 8(1) of the Constitution, and for a stay of execution pending the final disposal of the imminent proceedings.

We must immediately state that the substratum of the case advanced for the respondent rests on a twice compounded fallacy, *scilicet*, in seeking to implead what he purports to refer to as the decision of the Pardons Board and in doing so indirectly professing to impugn the decision and order of the Yang di-Pertuan Agong in the matter. The Pardons Board is only an advisory body and makes no decision whatsoever as such but only tenders advice to His Majesty for the purpose of the exercise of his powers of clemency under article 42 of the Constitution. Mr. Siva Segara for the respondent had perforce to concede this when we put it to him but says this was only an unfortunate use of the word 'decision'. We think it is very

much more than unfortunate in that this goes to the very basis of the respondent's claim. Mr. Siva Segara had once again to agree, when we pointed this out to him, that the primary powers of clemency are, for the purposes of this appeal, vested solely in His Majesty under the substantive clauses (1) and (2) of article 42 of the Constitution (read in the light of the Regulations) empowering him to make the decision in the circumstances of any particular case and the mode of the exercise of those powers and the reference to the advice and constitution of a Pardons Board specified in clauses (4) *et sequitur* of article 42 in fact provide the machinery for the functional implementation thereof.

The respondent by these proceedings is in our view in effect attempting to circuitously challenge the exercise by His Majesty of his powers of clemency in this case under article 42 of the Constitution which he is expressly precluded from doing by virtue of the provisions of article 32(1) of the Constitution which stipulate that His Majesty shall not be liable to any proceedings whatsoever in any court. The High Court of Australia in *Horwitz* v. *Connor*[1] held (at page 40) that no court has jurisdiction to review the discretion of the Governor in Council in the exercise of the prerogative of mercy, and a similar attitude toward the royal prerogative of mercy was adopted by the English Court of Appeal in *Hanratty* v. *Lord Butler of Saffron Walden.*[2] In relation to the question of the amenability of a prerogative power to judicial review we think that the enlightened approach is that this would be dependent on its nature or subject matter, and we find support for this view in the decision of the House of Lords in *Council of Civil Service Unions & Ors.* v. *Minister for the Civil Service*[3] where Lord Scarman in his speech (at page 407) says that it can be said with confidence the exercise of a prerogative power is subject to review if the subject matter in respect of which it is exercised is justiciable, that is to say, if it is a matter upon which the court can adjudicate, and again in the speech of Lord Roskill (at page 418) where he refers to examples of prerogative powers which he did not think could properly be made the subject of judicial review, such as *inter alia* that relating to the prerogative of mercy, because their nature and subject matter are such as not to be amenable to the judicial process.

In *de Freitas* v. *Benny*[4] Lord Diplock, who delivered the report of the Privy Council, in dealing with the power of clemency laid down in section 70(1) of the Constitution of Trinidad and Tobago said (at page 247):

> "Except in so far as it may have been altered by the Constitution the legal nature of the exercise of the royal prerogative of mercy in Trinidad and Tobago remains the same as it was in England at common law. At common law this has always been a matter which lies solely in the discretion of the sovereign, who by constitutional convention exercises it in respect of England on the advice of the Home Secretary to whom Her Majesty delegates her discretion. Mercy is not the subject of legal rights. It begins where legal rights ends."

We would add that Lord Diplock also said (at page 248) that a convicted criminal was not entitled to have disclosed to him any material furnished to the Minister and the Advisory Committee when they are exercising their respective functions under the relevant constitutional provisions in advising the Governor-General in regard to the exercise of the powers of clemency. Article 42 of our Constitution is a reiteration of the prerogative power of mercy exercisable on the advice of the appropriate Pardons Board. The power of pardon or otherwise to mete out clemency is an executive power, and in our Constitution the royal prerogative of mercy is expressly preserved by Article 42 of the Constitution and is recognised by its inclusion in Chapter 3 of Part IV thereof as an executive power [*cf. Hinds* v. *The Queen*[5] (at page 228)]. The Supreme Court of India has also held in *G. Krishta Goud & J. Bhoomaiah* v. *State of Andra Pradesh & Ors.*[6] that when the Constitution has empowered the nation's highest executive as the repository of the clemency power, the court cannot intervene and judicial review is excluded by implication. The principle underlying these cases is incisively ingeminated in the judgment of this court in *Sim Kie Chon* v. *Superintendent of Pudu Prison & Ors.*[7] which effectively disposed of the earlier action commenced by the respondent.

The respondent takes the point in these proceedings that the fourth appellant which is a creature of regulation 29 of the Regulations was not lawfully constituted and he seeks to impugn the validity of this regulation on the basis that the amendment effected thereto in 1981 could not be lawfully enacted in view of the provisions of the Emergency (Essential Powers) Act, 1979. This argument is, in our view, wholly bereft of any substance or merit whatsoever, and if an answer is required it is to be found pat in section 9 of that Act. The fourth respondent is the appropriate

Pardons Board properly constituted under the Regulations and was the proper body in the instant matter for the purposes of advising His Majesty under article 42 of the Constitution read with regulation 29 of the Regulations, and there is no violation of the provisions of article 42(11) in providing for the Prime Minister to be a member thereof instead of the Minister responsible for the Federal Territories of Kuala Lumpur and Labuan in the light of article 150(6) of the Constitution which validates any provision of a statute (judicially construed and settled to include regulations made thereunder) passed during an emergency which are inconsistent with any provision of the Constitution but subject to the exceptions specified in clause (6A) of article 150. It is abundantly clear that the purport and effect of regulation 29 of the Regulations is that it is to modify the provisions of clause (11) of article 42 of the Constitution in relation to security cases within the connotation thereof in the Regulations.

The respondent also complains that the fourth appellant failed to act fairly and observe the requirements of natural justice in that it should not take into consideration any evidence brought before it which was adverse to the respondent without giving him a chance to refute it, that he was not given an opportunity to be present in person or by counsel at the hearing before the Pardons Board nor was he supplied with the documents referred to in section 281 of the Code and its decision was not communicated to him in time or at all. We need only say on this aspect that there are no requirements to the effect contended in the Constitution or the Code, and we would refer in relation to this to the judgment of the Federal Court in *S. Kulasingam & Anor.* v. *Commissioner of Lands, Federal Territory & Ors.*[8] The English Court of Appeal has held in *Payne* v. *Lord Harris of Greenwich*[9] that the scope of the duty to act fairly imposed by the rules of natural justice depends upon the subject matter and circumstances of each case and there was accordingly no obligation for the disclosure to a prisoner of reasons for the refusal of his release on parole, and we would once again refer in this connection to the speech of Lord Diplock in *de Freitas* v. *Benny (supra)* (at page 248) which we have earlier adverted to. If any court were to accede to the contention advanced on behalf of the respondent on the lines indicated then it would be in effect be countenancing the respondent's participation in the exercise of an executive and prerogative power and virtually reactivating a concluded trial. It follows sequentially that if it is open to a court to examine the advice of the Pardons Board there would then in effect be an extra-curial retrial and endless reventilation of every convict's case. The respondent further raises the point of unfairness and prejudice by reason of the fact that the Attorney General who was the Public Prosecutor in the main trial of the respondent or his delegate participated as a member of the fourth appellant. This question is unarguable in view of the specific constitutional requirement to this effect in article 42(5) and (9) of the Constitution [*S. Kulasingam (supra)* at page 211], and no complaint of breach of natural justice is accordingly sustainable in this respect.

The earlier action instituted by the respondent on July 2, 1985 and which was struck out sought relief on the ground of discrimination in breach of article 8 of the Constitution but in the present proceedings the grounds for relief have been augmented and declarations sought to the effect we have indicated earlier. The appellants plead *res judicata* in this regard and we think the point is well taken and is supported by authority, and we would refer to the pronouncement of the Privy Council in *Hoystead & Ors.* v. *Commissioner of Taxation*[10] and a catenation of cases to the like effect, namely, that the plea of *res judicata* applies, except perhaps where special circumstances may conceivably arise of sufficient merit to exclude its operation, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

There is moreover the inherent jurisdiction of the court in cases where *res judicata* is not strictly established, and where estoppel *per rem judicatam* has not been sufficiently pleaded, or made out, but nevertheless the circumstances are such as to render any reagitation of the questions formally adjudicated upon a scandal and an abuse, the court will not hesitate to dismiss the action, or stay proceedings therein, or strike out the defence thereto, as the case may require. It would suffice in this regard to refer to the judgment of the Privy Council delivered by Lord Wilberforce in *Brisbane City Council and Myer Shopping Centres Pty. Ltd.* v. *Attorney-General for Queensland.*[11]

"The second defence is one of *'res judicata.'* There has, of course, been no actual decision in litigation between these parties as to the issue involved in the present case,

but the appellants invoke this defence in its wider sense, according to which a party may be shut out from raising in a subsequent action an issue which he could, and should, have raised in earlier proceedings. The classic statement of this doctrine is contained in the judgment of Wilgram V-C. in *Henderson* v. *Henderson* (1843) 3 Hare 100 and its existence has been reaffirmed by this Board in *Hoystead* v. *Commissioner of Taxation* [1926] A.C. 155. A recent application of it is to be found in the decision of the Board in *Yat Tung Investment Co. Ltd.* v. *Dao Heng Bank Ltd.* [1975] A.C. 581. It was, in the judgment of the Board, there described in these words:

'... there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings.' (p. 590)".

The attempt by way of the instant proceedings to relitigate and reopen the earlier action clearly reflects the appositeness of the caption suggested for this matter in the prelude to this judgment and would appear to us to be as clear an instance of an abuse of the process of the court as one can find within the connotation thereof enunciated in the speech of Lord Diplock in *Hunter* v. *Chief Constable of the West Midlands Police & Ors.*[12]

The respondent also takes issue on the fact that there were two warrants of execution of sentence under section 281 of the Code and that a third may yet be issued and that this is unlawful as there cannot be two or more concurrent or consecutive warrants. This argument is wholly devoid of merit as the first warrant of execution of sentence lapsed the day before the date set for execution on the stay granted at the instance of the respondent in the first action instituted by him and so a second one was inevitable and necessary when that stay was lifted and those proceedings dismissed. This matter is in fact envisaged and provided for in section 281(d)(ii) of the Code, and in any event section 28(1) of the Interpretation and General Clauses Ordinance, 1948 specifically provides that a power conferred or a duty imposed by a written law may be exercised or performed from time to time as occasion requires.

In the premises and for the reasons discussed we find that the instant action under consideration in this appeal is wholly unmeritorious and clearly an abuse of the process of the court. We would only add by way of peroration that to approbate and sustain the *modus operandi* resorted to by the respondent, spurred on perchance by the demon of eternal hope, would not only be countenancing an abuse of process by interminable litigation in the pattern of circular tail-chasing with no forward movement but might well in the process culminate in the transmutation of the sentence of death by hanging to one of death by old age or the passage of time with perhaps attendant ancillary complications of anxiety and frustration as well for the prisoner himself along the lines!

We accordingly at the conclusion of argument allowed this appeal with costs here and below to the appellants, set aside the order of the learned Judge and struck out the action instituted by the respondent.

Order accordingly.

Solicitors: *Siva Segara & Co.*

RE SITI MARIAM BTE HAJI PAWANCHIK

[O.C.J. (Edgar Joseph Jr. J.) October 14, 1983]

[Penang – Originating Summons No. 503 of 1983]

Land Law – Mortgage – Application to delete and expunge entry of transfer of mortgage after lapse of more than 60 years from register – Effect of Limitation Act 1939, s. 18(5) – Penang and Malacca Titles (Removal of Difficulties) Order 1966, s. 13.

The applicant in this case prayed for an order that the entry relating to the transfer of mortgage dated June 7, 1920, registered in the Registry of Land Titles against her land be deleted and expunged from the register. She submitted that the Transfer of Mortgage was still shown in the records of the Registry of Land Titles as an encumbrance despite a lapse of more than 60 years. The applicant contended that the above mortgage was barred by limitation and was now unenforceable and ineffective.

Held: the Director of Land Titles or any Deputy Director should hear and determine any application the applicant may make under the provisions of section 13 of the Penang and Malacca Titles (Removal of Difficulties) Order 1966, as soon as possible, and in any case, not later than six weeks from date of receipt of the same. In the event of the application being granted, the Registrar of Titles or his Deputy will also in consequence cancel any memorial of registration of the transfer of mortgage aforesaid which may appear in the Register of Title and make such other consequential orders as may be necessary.

Cases referred to:

(1) *Othman & Anor.* v. *Mek* [1972] 2 M.L.J. 158, 160.
(2) *Holmes* v. *Cowcher* [1970] 1 W.L.R. 834.
(3) *Dingle* v. *Coppen* [1899] 1 Ch. 726.
(4) *In re Lloyd* [1903] 1 Ch. 385.
(5) *In re Marshfield* (1887) 34 Ch. D. 721.
(6) *Edmunds* v. *Waugh* (1866) L.R. 1 Eq. 418.